

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WILLIE WASHINGTON #239592,

Plaintiff,

v.

MATTHEW FARBER, et al.,

Defendants.

CASE No. 1:23-cv-1228

HON. ROBERT J. JONKER

**ORDER APPROVING AND ADOPTING
REPORT AND RECOMMENDATION**

The Court has reviewed the Magistrate Judge's Report and Recommendation (ECF No. 30) filed on January 13, 2025. Plaintiff filed unsigned Objections to the Report and Recommendation on January 29, 2025. (ECF No. 31). On January 31, 2025, the Magistrate Judge ordered Plaintiff to file a signature page for his Objections (ECF No. 32), which Plaintiff filed on February 14, 2025 (ECF No. 35).

Under the Federal Rules of Civil Procedure, where, as here, a party has objected to portions of a Report and Recommendation, "[t]he district judge . . . has a duty to reject the magistrate judge's recommendation unless, on de novo reconsideration, he or she finds it justified." 12 WRIGHT, MILLER, & MARCUS, FEDERAL PRACTICE AND PROCEDURE § 3070.2, at 381 (2d ed. 1997). Specifically, the Rules provide that:

The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

FED. R. CIV. P. 72(b)(3); *see also* 28 U.S.C. § 636(b)(1)(C). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981).

The Magistrate Judge recommends that the Court grant Defendants' Motion for Summary Judgment (ECF No. 24) on the basis of exhaustion, deny Plaintiff's Motion for Summary Judgment (ECF No. 28), and dismiss Plaintiff's Eight Amendment claims against Defendants Farber and Streit without prejudice. After de novo review, the Court overrules Plaintiff's objections and adopts the Magistrate Judge's Report and Recommendation. The Magistrate Judge carefully and thoroughly considered the evidentiary record, the parties' arguments, and the governing law.

Defendants argue in their Motion that Plaintiff failed to exhaust his administrative remedies for all claims. (ECF No. 24). Plaintiff asserts that his Step I grievances were rejected as nongrievable (ECF No. 28, PageID.150), and he makes the very same argument in his Objections (ECF No. 31, PageID.191). This is false. Plaintiff's Step I grievances were rejected as vague, and those rejections were upheld on Step II appeals. (ECF No. 29-1, PageID.169). Rather than pursue any of those appeals to Step III, Plaintiff filed this action in federal court. (*See* ECF No. 25-3). There is therefore no dispute of material fact that Plaintiff failed to exhaust his administrative remedies for each of his claims. *See Sango v. Fleury*, 2:20-cv-186, 2021 WL 2942556, at *4 (W.D. Mich. May 6, 2021), *report and recommendation adopted sub nom. Sango v. Eubanks*, 2:20-CV-160, 2021 WL 2217372 (W.D. Mich. June 2, 2021), *aff'd sub nom. Sango v. Fleury*, No. 21-2597, 2022 WL 2163519 (6th Cir. May 4, 2022). Summary judgment in favor of each defendant is appropriate for the reasons described in the Report and Recommendation.

ACCORDINGLY, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge (ECF No. 30) is **APPROVED** and **ADOPTED** as the opinion of the Court.

IT IS FURTHER ORDERED that Plaintiff's Motion for Summary Judgment (ECF No. 28) is **DENIED**, and Defendants' Motion for Summary Judgment (ECF No. 24) is **GRANTED**, dismissing **without prejudice** Plaintiff's Eighth Amendment claims against Defendants Farber and Streit.

Dated: February 28, 2025

/s/ Robert J. Jonker
ROBERT J. JONKER
UNITED STATES DISTRICT JUDGE